

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JASON AUSTIN ASHLEY,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
LABOR,

Defendant.

Civil Action No. 3:23-CV-2195-X-BK

JOINT MOTION TO MODIFY PRELIMINARY SCHEDULING ORDER

The parties jointly submit this motion to modify the Preliminary Scheduling Order (ECF No. 17). Specifically, the parties respectfully seek the Court's permission to be excused from the mediation provision in Section D of the Scheduling Order.

I. STANDARD

Federal Rule of Civil Procedure 16(b)(4) allows a court to modify its scheduling order upon a showing of good cause. "Good cause" in this context is a "non-rigorous standard," and requests "made before the applicable deadline has passed should 'normally . . . be granted in the absence of bad faith on the part of the party seeking relief or prejudice to the adverse party.'" *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010) (quoting 4B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1165 (3d ed. 2004)).

II. ARGUMENT & AUTHORITIES

The parties respectfully submit the following two reasons as good cause for excusing them from mediation. First, the parties have already successfully used direct negotiations to substantially narrow the disputed issues. Specifically, in response to Mr. Ashley's concerns about the adequacy of the Department of Labor's release of records, the DOL re-evaluated its production and released additional records to him on December 3, 2023. At this point, the parties disagree on only three documents: two emails and one letter. The parties' success with narrowing the issues in dispute demonstrates that they were able to resolve disagreements directly, without incurring the cost of retaining a third-party mediator.

Second, as for the parties' remaining dispute over the three documents, the parties are convinced that mediation would be unlikely to resolve their remaining dispute. That is because (1) the remaining dispute is not amenable to compromise because there is no "middle ground" on whether the remaining documents are subject to disclosure; and (2) each party is firmly convinced of the correctness of their legal position, after thorough discussions. Therefore, on for their remaining disagreement, the parties would prefer to proceed directly to summary judgment, if the Court approves. *See, e.g., Evans v. U.S. Office of Personnel Mgmt.*, 276 F. Supp. 2d 34, 37 (D.C. Cir. 2003) ("Summary judgment is the preferred method of resolving cases brough under FOIA.")

This motion is not sought for the purpose of delay or for any other improper purpose. Both parties are committed to seeking a "just, speedy, and inexpensive determination" in accordance with Rule 1. To that end, the Department of Labor is

diligently preparing its summary-judgment motion and plans to have it on file on or before the May 28, 2024 deadline.

III. CONCLUSION

For the good cause shown above, the parties respectfully request the Court's permission to be excused from mediation.

Respectfully submitted,

JASON ASHLEY
PLAINTIFF IN PRO PER

LEIGHA SIMONTON
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

On May 1, 2024, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Andrea Hyatt
Andrea Hyatt
Assistant United States Attorney